

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORRIS WEATHERSPOON,

Plaintiff,

Case No. 14-cv-12789

Hon. Matthew F. Leitman

v.

SUSAN GEORGE, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF
COUNSEL FOR APPEAL (ECF #79) AND APPLICATION TO PROCEED
WITHOUT PREPAYING FEES OR COSTS ON APPEAL (ECF #89)**

On August 31, 2015, this Court entered an order granting summary judgment in favor of Defendants Jon Pavitt, Gail Wang, Eutrilla Taylor, and Diana Hering (the "August 31 Order"). (*See* ECF #67.) On October 5, 2015, the Court denied Plaintiff Morris Weatherspoon's ("Weatherspoon") Motion for Reconsideration of the August 31 Order (the "October 5 Order"). (*See* ECF #74.)

On October 22, 2015, Weatherspoon filed (1) a Notice of Appeal from the August 31 Order and the October 5 Order, and (2) a Motion for the Appointment of Counsel for Appeal (the "Motion") (ECF #79). Weatherspoon also filed an Application to Proceed Without Prepaying Fees or Costs on Appeal on November 16, 2015 (the "Application"). (ECF #89.) For the reasons stated below, the Court **DENIES** the Motion and the Application.

A. The Motion for Appointment of Counsel on Appeal

In the Motion, Weatherspoon asserts that the Court should appoint him appellate counsel because (1) he cannot afford counsel, (2) the issues in this case are complex, (3) he has limited access to the prison law library due to his placement in administrative segregation, and (4) he has limited knowledge of the law. (See Motion, ECF # 79 at 1, Pg. ID 543.) But as the Court has already explained to Weatherspoon on three separate occasions, these reasons are not sufficient to justify the appointment of counsel.¹ The appointment of counsel in a civil case “is not a constitutional right.” *Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993). “It is a privilege that is justified only by exceptional circumstances.” *Id.* No such circumstances exist here.²

B. The Application to Proceed *In Forma Pauperis*

This Court previously granted Weatherspoon leave to proceed in *forma pauperis*. (See ECF #4.) Under Federal Rule of Appellate Procedure 24(a)(3), that prior authorization permits Weatherspoon to “proceed on appeal *in forma pauperis*

¹ See Order Denying Plaintiff’s Motion for Appointment of Counsel, ECF #23 at 1, Pg. ID 238; Order Denying Plaintiff’s Motion for Appointment of Counsel, ECF #66 at 1, Pg. ID 452; October 5 Order, ECF #74 at 6, Pg. ID 504.

² The Court also is not inclined to appoint Weatherspoon appellate counsel at this time because there is authority indicating that Weatherspoon’s Notice of Appeal “divests this Court of jurisdiction to consider his motion for the appointment of counsel.” See *Wagner v. Smith*, No. 06-10514, 2007 WL 3124659, at *2 (E.D. Mich. Oct. 25, 2007).

without further authorization” unless this Court certifies, among other things, that his appeal “is not taken in good faith.” The Court now certifies that Weatherspoon’s appeal from the August 31 Order and the October 5 Order is not taken in good faith.

Weatherspoon’s appeal is not taken in good faith because it is premature. The August 31 Order and the October 5 Order did not dispose of all of the claims in the case; they are not final orders.³ Thus, Weatherspoon has no appeal of right from those orders, and he may not appeal from them by filing a Notice of Appeal under Rule 4 of the Federal Rules of Appellate Procedure. *See Porter v. Wright*, 968 F.2d 1215 (Table), 1992 WL 146626, at *1 (6th Cir. June 24, 1992) (citing *Oak Constr. Co. v. Huron Cement Co.*, 475 F.2d 1220, 1221 (6th Cir. 1973) (per curiam)). Simply put, there is no good faith basis for Weatherspoon’s attempt to pursue an appeal of right at this time.

³ Five Defendants still remain in this case, which include Angela Vettraino, Susan George, Tamara Scheppelman, Dr. Badawi Abdellatif, and a Defendant Weatherspoon has identified only as “Woern (Social Worker).” (*See Order Directing MDOC to Provide Additional Information Regarding Defendants Woern, Scheppelman, and George*, ECF #88 at 1, Pg. ID 642.)

Accordingly, **IT IS HEREBY ORDERED** that the Motion (ECF #79) and the Application (ECF #89) are **DENIED**.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: December 10, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 10, 2015, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

(313) 234-5113